

## **REMARKS**

### **Response to Claim Objections**

Claims 1, 40-45 and 47-53 were objected to by the Examiner because of the following informalities: In regards to claim 1, at line 8, the limitations "the distal end" lack sufficient antecedent basis. In response the applicants have corrected the claim to refer to the distal tip which has antecedent basis in line 3 of the claim.

### **Response to Claim Rejections Under 35 U.S.C. §103**

Claims 1, 40-43 and 47-53 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Kieturakis U.S. Pat. No. 5,794,626) in view of Tihon et al. (U.S. Pat. No. 5,415,656). In reviewing the Examiner's contentions with respect to the teachings of Kieturakis, applicants believe that the Examiner has misinterpreted this reference with respect to the driving member (30) which the Examiner contends is slidably disposed within the outer sheath.

The outer sheath (30) of Kieturakis is the driving member for moving the blades 15, so with this structure there is no driving member to be slidably disposed within the outer sheath as contended by the Examiner. In contrast, the outer sheath of applicants' device does not position the cutting member to an operative configuration, it covers the cutting members during advancement through tissue to the desired intracorporeal site. The outer sheath is then pulled back (or the shaft moved forward) to at least partially expose the cutting members. The longitudinal driving member of applicants' device is slidably disposed within the outer sheath and has a proximal portion in the housing and a distal portion connected to the elongated electrosurgical cutting element. Longitudinal

movement of the driving member of applicants device moves the cutting element between the radially retracted position and the radially extended position.

From this it is clear that the combination of references cited by the Examiner does not teach all the features of the claimed invention and therefore the combination cannot negate the patentability of applicants claims under 35 U.S.C. §103(a).

The Examiner has also rejected claims 44-45 as being unpatentable under 35 U.S.C. §103(a) over Kieturakis in view of Tihon et al. and further in view of Treat. However, neither Tihon nor Treat suggest modifying Kieturakis in order to make up for the deficiencies of this reference. The combination of references do not support the Examiner's contentions in this regard.

#### Conclusion

Applicants believe that the presently pending claims are directed to patentable subject matter. Reconsideration of the pending claims and an early allowance thereof are earnestly solicited.

Respectfully submitted,

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